

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 97-7005

CRAIG EVERETT ROBERTS,  
Defendant-Appellant.

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
Malcolm J. Howard, District Judge.  
(CR-94-65-H, CA-97-306-5-H)

Submitted: August 11, 1998

Decided: September 1, 1998

Before WILLIAMS and MICHAEL, Circuit Judges, and  
PHILLIPS, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Craig Everett Roberts, Appellant Pro Se. John Howarth Bennett, Barbara Dickerson Kocher, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

## OPINION

### PER CURIAM:

Appellant appeals the district court's order dismissing his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), as barred by the one-year limitation period imposed by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (effective Apr. 24, 1996). Appellant's conviction became final in June 1995. Because Appellant's conviction became final prior to implementation of the one-year limitation period, Appellant had until April 23, 1997, in which to file his § 2255 motion. See Brown v. Angelone, \_\_\_ F.3d \_\_\_, 1998 WL 389030, at \*5-\*6 (4th Cir. July 14, 1998) (Nos. 96-7173, 96-7208).

Appellant's § 2255 motion was dated April 22, 1997, the certified mail receipt was stamped April 23, and the motion was filed on April 24. Thus, Appellant's motion was not time barred. See Houston v. Lack, 487 U.S. 266, 276 (1988) (notice of appeal is deemed filed when it is delivered to prison officials); see also Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998) (applying Houston to the filing of habeas petition); Lewis v. Richmond City Police Dep't, 947 F.2d 733, 735-36 (4th Cir. 1991) (applying Houston to filing of civil rights complaint for statute of limitations purposes).

Accordingly, we grant a certificate of appealability on this issue, vacate the district court's order, and remand for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### VACATED AND REMANDED